There are grain elevators within the city limits of Enid owned by other firms, such as, Enid Terminal Elevator Company, General Mills, Farmers Grain, Pillsbury, and Johnston Grain Company (R. 413, 414, 441, Appendix G-1). All of these elevators at Enid compete with each other in the storage and merchandising of grain. For assessment purposes, all of these elevators have heretofore been assessed on a basis of ten cents per bushel capacity, which is approximately one-third of their fair cash market value (R. 413, Appendix G-1). In order to maintain equalization among them for tax purposes, all elevators in Garfield County, with the approval of the Oklahoma Tax Commission (R. 450, Appendix G-2), have been assessed at that uniform rate.

In 1958, the Oklahoma Tax Commission sent its field men into the State, and, by examining real estate transactions as reflected by the records of the Registrar of Deeds in each county, attempted to determine the ratio between the values of properties which had actually been sold, and their assessed valuations. For this study, property was classified into "Rural" and "Urban." In Garfield County (R. 1365), ninety-three (93) rural transactions were examined and some 658 urban transactions.

From that ratio study, the Commission determined (R. 1365) that the average assessed valuation of property in all counties in the State, compared with actual valuation, was 22.07 per cent. The ratio thus determined for Garfield County was 20.22 per cent.

In making that study, with respect to the rural transactions in Garfield County, the field man testified (R. 466-

467) that he did not include any transactions in the study of Garfield County concerning rural property in which a corporation was involved, but just included "rural farms."

Pursuant to this study made by the Oklahoma Tax Commission, the Board of Equalization at a meeting on August 3, 1960, entered an Order (Appendix "H") directing the County Assessor of Garfield County to increase "rural land and improvements" by 10 per cent, and "urban land and improvements," 1.75 per cent. "Personal property, none." Petitioner's property is "rural land and improvements" in the sense that it is not within the City.

Within ten days after the issuance of such notice, this petitioner, as a taxpayer, filed its complaint (Appendix "I") as did the County Attorney for Garfield County.

Fourteen other counties also filed protests or complaints; and, pursuant thereto, an extensive hearing was held before the Board. Testimony was taken, and the voluminous record consists of three volumes. On September 1, 1960, after the hearing had been concluded, the Board denied all of the protests, including that of your petitioner. On October 25, 1960, the Board adjourned sine die; within ten days thereafter, as provided by law, this petition was appealed therefrom to the Supreme Court of Oklahoma.

MANNER AND STAGES AT WHICH FEDERAL QUESTION WAS RAISED

In the first complaint filed with the State Board of Equalization (Appendix "I"), petitioner made the following assertion:

"The proposed increase is arbitrary, discriminatory, and capricious, and in violation of Article X, Section 5, of the Constitution of Oklahoma, requiring uniformity of taxation upon the same class of subjects. The effect thereof will be to deprive this taxpayer of its property without due process of law."

On appeals from the State Board of Equalization to the Oklahoma Supreme Court, the filing of a petition in error is not provided for, and the next opportunity petitioner had to assert the Federal question was in its brief, wherein the question was raised as its first proposition, in the same language as set forth above (Appendix "J").

The memorandum order of the State Supreme Court entered on July 10, 1961, denied petitioner's appeal without comment. The effect was that the question was raised at each stage of the proceeding and denied.

REASONS FOR GRANTING THE WRIT

The writ should be granted, because:

1. The order of the Board is discriminatory.

   A. It would result in a discriminatory increase in the assessed valuation of the property of this taxpayer from $4,251,502.00 by increasing it 10 per cent, or $425,150.00, without making the same percentage of increase in other properties of the same class lying inside of the city limits. (R. 1264, 1265, Appendix "H".)

2. The order of the Board is based upon an unrealistic and unauthorized classification. A city boundary line

constitutes no just or reasonable factor in the classification of property, for tax purposes.

As stated by the Honorable Justice Welch, concurred in by all the Court in 1949, in the case of *Custer County Excise Board* v. *St. Louis-San Francisco Railway Company*, 207 P.2d 774:

> "Obviously there is no difference between rural property and urban property in its relation to an ad valorem tax or a tax based on values, so that one property may be distinguished from the other as an object of taxation. Location alone is not a basis for the classification of the property for purposes of taxation on a basis of value. Rural and urban property being in the same class as a subject of ad valorem tax, it follows that uniformity requires that all such property within the confines of the county for which an ad valorem tax is levied should be treated alike * * *."

This Court has also recognized the fallacy of boundary line classification, when there are other overriding elements, as here.

In *Wheeling Steel Corp.* v. *Glander*, 69 Sup. Ct. 1201, 337 U.S. 580, involving inequality of treatment of foreign and domestic corporations in the ad valorem taxation of intangibles, the Court said:

> "It seems obvious that appellants are not accorded equal treatment, the inequality is not because of the slightest difference in Ohio's relation to the decisive transaction, but solely because of the different residence of the owner."

3. The Board violated the standards established by its own Supreme Court in arbitrarily increasing the value of petitioner's property.

Its order cannot stand where there is "gross error" in the system on which the valuation is made. *Carrico* v. *Crocker*, 38 Okla. 440, 133 Pac. 182.

There can be no question but that "gross error" was committed, when the assessed valuation of a large industrial facility such as petitioner's is permitted to be increased on the basis of the estimated sale price of 93 unrelated agricultural tracts in the county (R. 457).

4. The proposed increase would assess petitioner's property in excess of the constitutional limitation.

   A. The actual cash value of petitioner's property located outside the city limits of Enid is $12,884,975.00 (R. 1264). The assessed valuation for 1960 was $4,251,502.00. The added 10 per cent increase makes a total assessed valuation of $4,676,652.00, which is 36.61 per cent of the value thereof; is in excess of the constitutional limitation of 35 per cent; and is over one and one-half times the county ratio of 20.22 per cent.

5. The question is not moot because the tax represented by this increase is being held in trust by the County Treasurer, pending determination of the question by this Honorable Court.

6. The discrimination between taxpayers owning and operating the same types of property in the same vicinity; the arbitrary use of a city boundary as a standard by which to determine the values of property; the gross error in the system applied by the Board; and the assessment of petitioner's property above the constitutional limitation, each, individually, and jointly, result in denying this petitioner the equal protection of the laws; and deprive it of its property without due process of law.

This Court has afforded relief in the following analogous cases:

—*Cumberland Coal Co.* v. *Board of Revision*, 284 U.S. 23, 52 Sup. Ct. 48, 76 L. Ed. 146;

Iowa Des Moines National Bank v. *Bennett*, 284 U.S. 239, 245, 52 Sup. Ct. 133, 135, 76 L. Ed. 265;

Concordia Fire Ins. Co. v. *Illinois*, 292 U.S. 535, 54 Sup. Ct. 830, 78 L. Ed. 1411;

Sioux City Bridge v. *Dakota Co.*, 260 U.S. 441, 43 Sup. Ct. 190, 67 L. Ed. 340.

It is submitted that the action of the Board involves such an arbitrary disregard of the principles heretofore enunciated by this Court, as to call for review of the ruling below.

Respectfully

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October, 1961.